

IN THE JUSTICE OF THE PEACE OF  
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE CO.  
COURT NO. 13

**Plaintiff**

East Coast University Village  
Laura Gerstner  
207 Mederia Circle  
Newark, De. 19702

v.

CIVIL ACTION: JP13-09-004544

**Defendant**

Tara Ward  
409 Mederia Circle  
Newark, De. 19702

**ORDER**

Trial De Novo held May 5, 2009. Plaintiff present represented by Wendy Bennett pursuant to Delaware Supreme Court Rule 57. Defendants present pro se.

Plaintiff East Coast University Village Apts. (hereinafter East Coast) brought this action for back rent, late fees (\$ 4,775.69) and possession of the rental unit located at 409 Mederia Circle, Newark, Delaware. Defendants presented an oral counterclaim for \$250 in storage fees and rent abatement equal to two months rent due to defective conditions of the rental unit.

According to the Plaintiff, the parties entered into a lease agreement on or about November 14, 2008. The lease called for monthly rent of \$893.00. The Defendants were initially allowed to move into a one-bedroom unit (#311) until the two-bedroom unit was ready for occupancy. The first two-bedroom unit (#614) was not acceptable to the tenants, so the landlord provided them with a different unit (#409). Defendants contend that although unit #409 was supposedly ready for occupancy, there were still numerous items that required repair or replacement. These problems included kitchen and bathroom leaks, cracked sealing around tub, malfunctioning toilet, roach infestation and drafty windows.

Ms. Bennett from East Coast testified that tenants failed to pay the balance of December's rent in the amount of \$867.06, in addition to rent from January to present at \$893.00 per month. Tenants admit that rent for the months stated has not been paid. Plaintiff also requests five months of late fees at \$47.00 per month. Plaintiff presented the Court with a copy of the lease, account ledger, work orders and correspondence concerning conditions. They failed to present evidence of a five-day letter.

In defense of the counterclaim, East Coast testified they had made the necessary repairs, although some were delayed due to supply back order. Ms. Gerstner, East Coast regional manager testified that she sent a letter to the defendant asking they contact her if not satisfied with repairs. The defendants aver the repairs were of poor quality and did not adequately address the problems. However, Ms. Ward did not contact the East Coast again because the landlord had filed the instant action for rent and possession.

### FINDINGS

The Court finds that the testimony and evidence presented by the Plaintiff substantiate a claim for unpaid rent in the amount of \$4,439.06. However, the late fees demanded were in excess of the 5% allowable under the Landlord Tenant Code. Therefore, late fees are capped at \$44.65 per month, totaling \$223.25 for five months. Plaintiff's failure to provide proof of a five-day letter prohibits an award of possession. If a five-day were sent that included late fees above 5% of the monthly rent, the Court would have declared the notice defective and possession would be denied. However, Ms. Ward testified they are in the process of moving and will be out of the unit by close of Sunday, May 10, 2009.

As to the counterclaim, the Court finds that the evidence supports the award of 25% rent abatement on all rent due based on the defective conditions of the rental unit before and after some repairs were purportedly completed. The total rent abatement awarded is \$1202.79.

### CONCLUSION

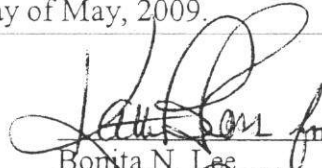
As to the case-in-chief judgment is awarded in favor of the Plaintiff East Coast for \$4,811.16 for back rent, late fees and per diem from December through May 5, 2009.


As to the Defendant's counterclaim, judgment is awarded in favor of the Defendants Tara and Robert Ward for \$1202.79.

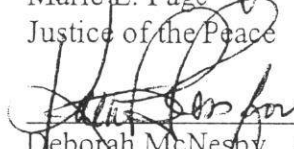
(3)

Net judgment is for the Plaintiff in the amount of \$3608.37 plus \$40.00 court costs and post judgment interest at 5.5%. The per diem rent beginning May 5, 2009 is \$22.33 which reflects the 25% rent abatement. Possession will remain with the tenant until they completely move out Sunday, May 10, 2009, pursuant to their testimony.

IT IS SO ORDERED this 13<sup>th</sup> day of May, 2009.

  
Bonita N. Lee  
Justice of the Peace

  
Marie E. Page  
Justice of the Peace

  
Deborah McNesby  
Justice of the Peace

